



Alan C. Lloyd, Ph.D.
Agency Secretary

California Regional Water Quality Control Board North Coast Region

Beverly F. Wasson, Chairperson

<http://www.waterboards.ca.gov>

5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone 1-877-721-9203(toll free) Office (707) 576-2220 Fax (707) 576-2557



Arnold
Schwarzenegger
Governor

TO: Luis Rivera
Robert Klamt
Mark Neely

FROM: Catherine Kuhlman *Catherine Kuhlman*
Executive Officer
NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD

DATE: July 12, 2005

**SUBJECT: SEPARATION OF FUNCTIONS FOR PROCEEDINGS ON
WATERSHED-WIDE WDRS FOR FRESHWATER CREEK AND ELK
RIVER (WWDRs).**

The North Coast Regional Water Quality Control Board (Regional Board) is preparing to consider the adoption of waste discharge requirements for the Freshwater Creek and Elk River watersheds. These WWDRs will regulate timber-harvesting activities by Scotia Pacific Company, Salmon Creek Corporation, and the Pacific Lumber Company (collectively Pacific Lumber). The purpose of this memorandum is to confirm membership of two teams working on this issue and to establish procedures to assure the Regional Board's proceedings in this matter are fair and impartial. The teams and procedures will remain in place until after the Regional Board issues final Orders in this matter.

The Regional Board proceedings in this matter are subject to regulations in Title 23, California Code of Regulations (CCR) Division 3, Chapter 1.5, section 648 et seq., chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code. The Regional Board staff as well as Pacific Lumber are currently designated parties to the proceedings. Other interested persons will likely seek status as designated parties and the current list of parties will be expanded to include any other person whom the Regional Board, or the Executive Officer on behalf of the Regional Board, determines should be designated as a party to the proceedings.

Because the Regional Board proceedings involve an intensely controversial permitting action, it is necessary at this time to separate the functions of staff members presenting evidence for consideration by the Regional Board from those of staff members providing advice to the presiding hearing officer (in this case the Regional Board Chair and other Regional Board members). Assigning responsibility for advising the Regional Board Members to staff other than those who will present testimony to the Regional Board Members will help assure the fairness

California Environmental Protection Agency



Recycled Paper

and impartiality of the Regional Board's proceedings. Accordingly, the Regional Board staff participating in the proceedings will be separated into two groups.

One group, the WWDR Issuance Team (Issuance Team), will serve as advocates for the draft WWDRs and will assume responsibility for presenting evidence to the Regional Board on the issues that will be described in a public hearing notice. The other team, the WWDR Advisory Team (Advisory Team), will assist the Regional Board Chair in matters such as enforcing deadlines and other limitations on written and electronic submissions and exhibits, and preparing for and conducting the proceedings. The Advisory Team will also provide advice to the Regional Board Chair and other Regional Board members in their deliberations on the evidence presented in the proceedings.

Consistent with this separation of functions, members of the Issuance Team will be treated like any other party before the Regional Board throughout the proceedings, and should not have any contact with Regional Board Members or members of the Advisory Team on matters relating to the proceedings, except where those contacts are consistent with the limitations on *ex parte* contacts that apply to all other parties. For purposes of this memorandum, an "*ex parte* contact" is any written or verbal communication, pertaining to the draft WWDRs for Freshwater Creek and Elk River, between a member of the Issuance Team and a Regional Board Member or a staff member of the Advisory Team, unless the communication is copied to all other parties to the proceedings (if written) or made at a proceeding open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not "*ex parte* contacts" and are not restricted.

I am designating the following staff members as the Issuance Team:

Mark Neely, Senior Engineering Geologist
David Kuszmar, Water Resource Control Engineer
Matthew Buffleben, Water Resource Control Engineer
Adona White, Water Resource Control Engineer

Robert Klamt, Chief of the Timber Division, will supervise the Issuance Team. Luis Rivera, Assistant Executive Officer, will in turn supervise Robert Klamt in this matter. For this matter only, I will not be supervising Luis Rivera, Robert Klamt, or the Issuance Team. The State Water Resources Control Board, Office of Chief Counsel is assigning Sheryl Schaffner, Senior Staff Counsel, to provide legal support to the Issuance Team.

I, as Executive Officer, and David Evans, Senior Water Resource Control Engineer, will serve as members of the Advisory Team. The Office of Chief Counsel is assigning Erik Spiess, Staff Counsel, and Philip Wyels, Assistant Chief Counsel to provide legal support to the Advisory Team. Mr. Wyels will not be supervising Sheryl Schaffner for this matter.



June 12, 2005

It is anticipated that as the Issuance Team prepares its testimony, and as the Advisory Team reviews the written submittals from parties and interested persons, either or both teams may conclude that additional staff are needed. Should that occur, they should contact me or Mr. Craig Wilson, Chief Counsel, as appropriate, to request assignment of additional staff as necessary. Staff assigned to the Advisory Team should not include any individuals who have served as members of the Issuance Team or who actively participate in formulating the terms and conditions of tentative WWDRs or a supporting Technical Report in this matter.

Any staff assigned to or who assists either team, during the proceedings or evaluating the hearing record, should be specifically assigned to that team. This includes any managers or supervisors who, by actively directing or assisting either team on matters such as deciding what theories to argue, go beyond routine procedural matters or assignment of staff. Once assigned to either team, an individual shall not participate in matters concerning the WWDRs that are assigned to the other team. For example, a staff member assigned to the Issuance Team cannot participate in closed meetings with any Regional Board Member or Advisory Team Member to discuss issues associated with the these WWDRs.

Please make sure any staff that may be assigned to either team or may be involved in discussions of the proceedings on the WWDRs for Freshwater Creek and Elk River are aware of and follow these procedures.

Separations of functions-wwvdr.doc

cc: Beverly Wasson, Regional Board Chair
Craig Wilson, Chief Counsel, State Water Resources Control Board
Sheryl Schaffner, Senior Staff Counsel, State Water Resources Control Board
Erik Spiess, Senior Staff Counsel, State Water Resources Control Board
Phillip Wyels, Assistant Chief Counsel, State Water Resources Control Board
David Evans, Senior Water Resource Control Engineer

